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LOUISE BAYLES-FIGHTMASTER

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MARK ANDREWS,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CONSUMER AFFAIRS, SONOMA COUNTY
DEPARTMENT OF CHILD SUPPORT
SERVICES, CALIFORNIA DEPARTMENT OF
MOTOR VEHICLES, CALIFORNIA BUREAU
OF AUTOMOTIVE REPAIR, LOUISE BAYLES
FIGHTMASTER, KIRK GORMAN, KATHY
SIMON, and DOES 1 through 20,

Defendants.

CASE NO. 17-CV-00252-WHO

**DEFENDANT LOUISE BAYLES-
FIGHTMASTER'S SUPPLEMENTAL
REPLY BRIEF**

Date: July 19, 2017
Time: 2:00 p.m.
Courtroom: 2, 17th Floor
Judge: Hon. William H. Orrick

Action Filed: January 17, 2017

Defendant Louise Bayles-Fightmaster hereby submits her supplemental reply to Plaintiff Mark Andrews' late-filed opposition pursuant to the Court's July 25, 2017 Order. See Dkt. No. 31.

I. INTRODUCTION

In her moving papers, Louise Bayles-Fightmaster, a former Commissioner of the Superior Court of California, County of Sonoma, itemized the First Amended Complaint's substantial flaws. Dkt. No. 13. The plaintiff now has submitted a late-filed opposition (Dkt. No. 28), which this Court has agreed to consider. Dkt. No. 31. Plaintiff's opposition fails to meaningfully refute Commissioner Bayles-

1 Fightmaster's arguments. Plaintiff does not offer any legal analysis or facts to overcome the motion to
2 dismiss. In addition to highlighting these omissions in the Plaintiff's opposition, Commissioner Bayles-
3 Fightmaster more particularly replies as follows.

4 II. ARGUMENT

5 A. The Motion to Dismiss Should be Granted

6 In his opposition, Plaintiff spends considerable energy setting forth his views on pro se pleadings
7 and the standard of review for a motion to dismiss. Dkt. No. 28, pp. 3-6. Although it is true that pro se
8 complaints are to be liberally construed and are held to less stringent standards than formal pleadings
9 drafted by lawyers (*Erickson v. Pardus*, 551 U.S. 89, 94 (2007)), pro se pleadings must still allege facts
10 sufficient to allow a reviewing court to determine whether a claim has been stated. *Ivey v. Bd. of*
11 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted). "A liberal
12 interpretation of a civil rights complaint may not supply essential elements of the claim that were not
13 initially pled. Vague and conclusory allegations of official participation in civil rights violations are not
14 sufficient to withstand a motion to dismiss." *Ivey*, 673 F.2d at 268. Here, Plaintiff has not asserted
15 facts, even if taken as true, that are sufficient to state a plausible claim against Commissioner Bayles-
16 Fightmaster for alleged deprivation of a federal statutory or constitutional right. *Howerton v. Gabica*,
17 708 F.2d 380, 382 (9th Cir. 1983). He has also failed to state a claim that is not otherwise barred by the
18 *Rooker-Feldman* doctrine, absolute judicial immunity, or on other grounds. The First Amended
19 Complaint should therefore be dismissed.

20 1. The federal court lacks subject matter jurisdiction to hear this matter.

21 In her moving papers, Commissioner Bayles-Fightmaster has noted that the *Rooker-Feldman*
22 doctrine prohibits federal jurisdiction because Plaintiff seeks the de facto equivalent of review of
23 unfavorable state-court rulings. The *Rooker-Feldman* doctrine prevents federal district courts "from
24 exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment."
25 See e.g., *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004); *Noel v. Hall*, 341 F.3d 1148,
26 1163-65 (9th Cir. 2003) (discussing *Rooker-Feldman* doctrine and providing, at p. 1164: "If a federal
27 plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a
28 state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal

1 district court.”); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 901 (9th Cir. 2003) (“Stated plainly, *Rooker-*
2 *Feldman* bars any suit that seeks to disrupt or ‘undo’ a prior state-court judgment, regardless of whether
3 the state-court proceeding afforded the federal-court plaintiff a full and fair opportunity to litigate her
4 claims.”) (internal quotations omitted). Although the First Amended Complaint facially asserts alleged
5 constitutional violations, its substance challenges the state court’s denial of Plaintiff’s motion seeking
6 the release of his licenses. See e.g., *Grimes v. Alameda Cnty. Soc. Servs.*, No. C11-02977 WHA, 2011
7 WL 4948879, at *3 (N.D. Cal. Oct. 18, 2011). The complaint is, at its core, an appeal of and
8 inextricably intertwined with the state court’s decision and an improper collateral attack on its prior
9 rulings. Accordingly, this Court lacks subject matter jurisdiction under *Rooker-Feldman*.¹

10 Plaintiff argues that *Rooker-Feldman* does not apply because Plaintiff “did not have a full
11 opportunity to argue his claim on appeal.” Dkt. No. 28, at p. 6. Plaintiff does not say what claim he is
12 referring to or why he did not have a fully opportunity to argue his claim on appeal. However, his
13 statement underscores the idea that Plaintiff’s lawsuit is a de facto appeal from a disagreeable state court
14 decision.

15 Plaintiff also argues that the holding of *Universal Oil Products Company v. Root Refining*
16 *Company*, 328 U.S. 575 (1946), a patent infringement suit, gives this court jurisdiction to “investigate a
17 question as to whether there is a fraud in the procurement of the judgment.” Dkt. No. 28, at p. 6.
18 Federal courts are courts of limited jurisdiction. The cited cases do not expand this jurisdiction or confer
19 jurisdiction as Plaintiff suggests. Nor has Plaintiff alleged facts showing “fraud in the procurement of
20 the judgment” or warranting an investigation.

21 **2. Plaintiff’s claims are barred by the doctrines of res judicata and collateral**
22 **estoppel.**

23 Plaintiff’s suggestion that “corruption” or other unlawful conduct in the state court proceedings
24 prevented him from challenging the legality of the license suspension, or from getting his licenses back
25 earlier than he did (Dkt. No. 28, at p. 7), are barred by the doctrines of res judicata and collateral
26 estoppel. “Res judicata, or claim preclusion, prohibits lawsuits on ‘any claims that were raised or could
27

28 ¹ Commissioner Bayles-Fightmaster also raised dismissal of Plaintiff’s claims on abstention grounds.
Plaintiff does not address this in his opposition.

1 have been raised' in a prior action.” *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002)
2 (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001)). Res judicata
3 applies when there is: (1) an identity of claims; (2) a final judgment on the merits; and (3) identity or
4 privity between the parties. *Stewart*, 297 F.3d at 956. Under California law, the doctrine encompasses
5 specific matters that are within the scope and related to the subject-matter litigated in the prior suit, even
6 if the issue subsequently raised was not expressly pleaded or litigated in the prior suit. *See Thibodeau v.*
7 *Crum*, 4 Cal.App.4th 749, 755 (1992). “The reason for this is manifest. A party cannot, by negligence
8 or design, withhold issues and litigate them in consecutive actions. Hence the rule is that the prior
9 judgment is res judicata on matters which were raised or could have been raised, on matters litigated or
10 litigable.” *Id.* at 755 (citation omitted).

11 The three elements for res judicata are met here. There is an identity of claims because the
12 grounds supporting Plaintiff’s current constitutional claims were raised or should have been raised with
13 Plaintiff’s motion seeking the return of his licenses, and again when he pled guilty to three counts of
14 contempt of court to “get [his] licenses back.” (FAC, ¶¶ 21-23, 27-29.) There was a final judgment on
15 the merits in the trial court when Plaintiff pled guilty. There is also an identity of parties. Plaintiff
16 cannot re-litigate claims decided against him in the prior state court proceedings. They are barred by res
17 judicata. *See Haupt v. Dillard*, 17 F.3d 285, 288 (9th Cir. 1994).

18 Plaintiff’s claim that he was denied a hearing regarding the license suspension is also barred by
19 collateral estoppel. Collateral estoppel or issue preclusion, applies to “prevent[] a party from
20 relitigating an issue decided in a previous action if four requirements are met: (1) there was a full and
21 fair opportunity to litigate the issue in the previous action; (2) the issue was actually litigated in that
22 action; (3) the issue was lost as a result of a final judgment in that action; and (4) the person against
23 whom the collateral estoppel is asserted in the present action was a party or in privity with a party in the
24 previous action.” *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1050 (9th Cir. 2008) (citation and
25 quotation marks omitted). Collateral estoppel applies because the four requirements are met. Plaintiff’s
26 licenses were admittedly suspended for failing to make court-ordered child support payments. (FAC, ¶¶
27 17-28.) Plaintiff challenged the propriety of the suspension by motion. (FAC, ¶ 17-28.) The court
28 denied the motion. Plaintiff subsequently pled guilty to contempt of court for failing to pay court-

1 ordered child support. (FAC, ¶¶ 27-28.) The court ordered that his licenses be released. (*Id.*) Plaintiff
2 had a full and fair opportunity to litigate the propriety of the license suspension in the trial court. The
3 guilty plea was a final judgment and undermines Plaintiff’s allegations that the license suspension was
4 unlawful. Plaintiff is also the party against whom collateral estoppel is asserted. Plaintiff may not now
5 re-litigate the same issues that were decided against him in the earlier child custody proceeding.

6 **3. Plaintiff’s claims are barred by absolute judicial immunity.**

7 Commissioner Bayles-Fightmaster, who is sued in her role as Commissioner for the Superior
8 Court, has raised absolute judicial immunity in response to Plaintiff’s claims. *Pierson v. Ray*, 386 U.S.
9 547, 553-55 (1967) (applying judicial immunity to actions under § 1983). A state court judge is
10 absolutely immune from civil liability for damages for acts performed in her judicial capacity and will
11 not be deprived of that immunity because the action she took “was in error, was done maliciously, or in
12 excess of [her] authority[.]” *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978) (citing *Bradley v. Fisher*,
13 80 U.S. (13 Wall.) 335, 351 (1872)); *see also Mireles v. Waco*, 502 U.S. 9, 11 (1991) (judicial immunity
14 is not overcome by allegations of bad faith or malice); *Sadorski v. Mosley*, 435 F.3d 1076, 1079 n.2 (9th
15 Cir. 2006) (mistake alone is not sufficient to deprive a judge of absolute immunity). Plaintiff’s claims
16 asserted against Commissioner Bayles-Fightmaster arise out of a September 18, 2013 ruling she made in
17 adjudicating Plaintiff’s case at the trial level. The actions of Commissioner Bayles-Fightmaster are
18 protected from Plaintiff’s claims by absolute judicial immunity. Plaintiff does not allege or offer any
19 facts showing that immunity is lost. The *Bulloch* and *Owen* cases he cites are also inapplicable and
20 presented without legal analysis or argument. Dkt. No. 28, at pp. 6-7. Plaintiff’s claims against
21 Commissioner Bayles-Fightmaster are barred as a matter of law and must be dismissed.

22 **4. Plaintiff’s claims are barred by the Eleventh Amendment.**

23 In her moving papers, Commissioner Bayles-Fightmaster has noted that she is a state employee
24 who has Eleventh Amendment immunity from suit in this forum. *Flint v. Dennison*, 488 F.3d 816, 824-
25 825 (9th Cir. 2007); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984) (“a claim that
26 state officials violated state law in carrying out their official responsibilities is a claim against the State
27 that is protected by the Eleventh Amendment.”). This immunity is a complete bar to the Plaintiff’s
28 damages claims. Plaintiff’s opposition does not offer any facts or legal basis suggesting otherwise.

1 Plaintiff asserts that Commissioner Bayles-Fightmaster “failed to perform her judicial
2 functions,” and that “the impartial function of the court [has] been directly corrupted.” Dkt. No. 28, at p.
3 6. These are legal conclusions devoid of specific facts. Plaintiff’s own facts also confirm that
4 Commissioner Bayles-Fightmaster is being sued for carrying out her judicial function because he
5 complains solely about her rulings in his case and her denial of his motion. The claims asserted against
6 her in her official capacity are barred by the Eleventh Amendment.

7 **5. Plaintiff’s claims are barred by the applicable statute of limitations.**

8 Commissioner Bayles-Fightmaster has noted that Plaintiff’s claims are barred by the 2-year
9 statute of limitations applicable to personal injury actions. Plaintiff argues there was “fraud in the
10 procurement of the judgment,” and appears to be arguing that the 3-year statute of limitations for fraud
11 should apply. Dkt. No. 28, at p. 7. The claim that there was “fraud in the procurement of the judgment”
12 is a legal conclusion devoid of specific facts. The claim is contradicted by other allegations in the First
13 Amended Complaint. Plaintiff also has not sufficiently alleged that Commissioner Bayles-Fightmaster
14 caused him to be deprived of a constitutional right to state a claim under § 1983. *Howerton, supra*, 708
15 F.2d at 382. Even assuming Plaintiff could state a cause of action for fraud and a 3-year statute of
16 limitations applied, moreover, Plaintiff’s First Amended Complaint is still barred by the applicable
17 statute of limitations. According to the pleadings, Commissioner Bayles-Fightmaster wrongfully denied
18 his September 13, 2013 motion seeking the return of his licenses. (FAC, ¶¶ 21-23.) At that time,
19 Plaintiff knew or had reason to know of the injury which is the basis of this action. Yet Plaintiff did not
20 file his complaint until January 17, 2017, which is after expiration of the 3-year statute of limitations.
21 Since Plaintiff can prove no set of facts that would establish the timeliness of his claims against
22 Commissioner Bayles-Fightmaster, his claims should be dismissed.

23 **6. Plaintiff fails to state a plausible claim upon which relief may be granted.**

24 Commissioner Bayles-Fightmaster has noted that there are no allegations in the First Amended
25 Complaint that are sufficient to support a claim under 42 U.S.C. § 1983 against her. In his opposition,
26 Plaintiff argues that Commissioner Bayles-Fightmaster “failed to perform her judicial function” and
27 “caus[ed] the impartial function of the court to be directly corrupted.” Dkt. No. 28, at sp. 7. He also
28 repeats his generalized allegations of “fraud.” *Id.* at pp. 6-7. However, these are legal conclusions

1 devoid of specific facts. Nothing in the pleading prompts an inference that Commissioner Bayles-
2 Fightmaster's actions were contrary to law or that she acted outside of her official role. Nor can it
3 reasonably be said that she acted to abridge any of the Plaintiff's federally-protected rights. In addition,
4 there are no facts establishing what Commissioner Bayles-Fightmaster did or did not do that allegedly
5 amounted to "fraud," or how any judgment referred to in Plaintiff's pleadings was procured by fraud or
6 the result of a "fraud on the court." Plaintiff's allegation that he was denied a hearing is also
7 contradicted by other allegations in the First Amended Complaint that there were hearings and that the
8 Court ruled on a motion brought by Plaintiff seeking return of his licenses. (FAC, ¶¶ 21-23, 25, 27, 29.)
9 Thus, Plaintiff fails to state a plausible § 1983 claim against Commissioner Bayles-Fightmaster and his
10 First Amended Complaint against her should be dismissed. *See e.g., Taylor v. List*, 880 F.2d 1040, 1045
11 (9th Cir. 1989); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

12 **7. Plaintiff fails to state a tort claim under California law.**

13 Commissioner Bayles-Fightmaster also noted in her moving papers that Plaintiff, in addition to
14 failing to state a claim under § 1983, has failed to sufficiently allege a claim for damages under state law
15 because he has not alleged facts showing compliance, or excuse from compliance, with claim
16 presentation requirements under the Government Claims Act. Plaintiff's opposition does not make any
17 mention of this requirement. Plaintiff also does not offer any facts showing compliance or excuse from
18 compliance. Any alleged tort claims under state law are therefore barred as a matter of law and should
19 be dismissed.

20 **B. Leave to Amend Should be Denied**

21 If there is strong evidence that amendment would be futile, a court should dismiss the complaint
22 without leave to amend. *See Sonoma County Ass'n of Retired Employees v. Sonoma County*, 708 F.3d
23 1109, 1117 (9th Cir. 2013); Fed. R. Civ. P. 15. In determining the futility of amendment, the court
24 should examine whether the complaint could be amended to cure the defect "without contradicting any
25 of [the] original complaint." *Reddy v. Litton Indus.*, 912 F.2d 291, 296 (9th Cir. 1990). Plaintiff's First
26 Amended Complaint and late-filed opposition make plain that amendment would be futile. The claims
27 are implausible. Amendment of the pleadings would not cure the jurisdictional defect or bar to suit
28 based on judicial immunity. Leave to amend should not be allowed.

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Dated: August 1, 2017

By: _____ /s/
Kimberly M. Drake
Attorneys for Defendant
LOUISE BAYLES-FIGHTMASTER

1 **CERTIFICATE OF SERVICE**

2

3 I, the undersigned, declare as follows:

4 I am a citizen of the United States and employed in the County of Alameda; I am over the age of

5 eighteen years and not a party to the within entitled action; my business address is Jarvis, Fay, Doporto

6 & Gibson, LLP, 492 Ninth Street, Suite 310, Oakland, California 94607.

7 On August 1, 2017, I served the within:

8 **DEFENDANT LOUISE BAYLES-FIGHTMASTER'S SUPPLEMENTAL REPLY BRIEF**

9 (X) (By First Class Mail) I caused this envelope, with postage thereon fully prepaid, to be placed in

10 the United States mail to be mailed by First Class mail at Oakland, California, to:

11 **Mark T. Andrews**
12 **3436C Mendocino Avenue**
13 **Santa Rosa, CA 95403**

14 *Plaintiff in pro per*

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is

16 true and correct.

17 Executed on August 1, 2017, at Oakland, California.

18 _____
19 /s/
Chelsea L. Torres